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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

MARIO FERNANDEZ

Plaintiff,

vs.

CITY OF LOS ANGELES, a government entity;
 LOS ANGELES POLICE DEPARTMENT, a
 government entity; and DOES 1 through 100,
 inclusive,

Defendants.

CASE NO. **20STCV44931**

COMPLAINT FOR DAMAGES

1. Retaliation in Violation of California
 Labor Code § 1102.5

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff Mario Fernandez and hereby demands a trial by jury, and based on
 information and belief complains and alleges as follows:

THE PARTIES

1. At all times relevant hereto, Plaintiff Mario Fernandez (hereinafter "Plaintiff") was
 employed with the Los Angeles Police Department ("LAPD" or "Department") and is a competent
 adult.

2. Plaintiff is informed and believes and thereon alleges that, at all times relevant hereto,
 Defendant CITY OF LOS ANGELES ("City" or "Defendant"), was a public entity violating laws
 within the State of California, County of Los Angeles. At all times pertinent hereto, Defendant City

1 owned, controlled, and operated the Defendant LOS ANGELES POLICE DEPARTMENT
2 (“Department” or “LAPD”).

3 3. Plaintiff is informed and believes and thereupon alleges that Defendants DOES 1
4 through 100, inclusive, and each of them, at all times relevant hereto, were individuals or public,
5 business, and/or other entities whose form is unknown, committing torts in and/or engaged in
6 purposeful economic activity within the County of Los Angeles, State of California.

7 4. The true names and capacities of Defendants DOES 1 through 100, and each of them,
8 whether individual, corporate, associate or otherwise, are unknown to Plaintiff at this time, therefore
9 Plaintiff sues said Defendants by such fictitious names. Plaintiff will file DOE amendments, and/or
10 ask leave of court to amend this complaint to assert the true names and capacities of these
11 Defendants when they have been ascertained. Plaintiff is informed and believes, and upon such
12 information and belief alleges, that each Defendant herein designated as a DOE was and is in some
13 manner, negligently, wrongfully, or otherwise, responsible and liable to Plaintiff for the injuries and
14 damages hereinafter alleged, and that Plaintiff’s damages as herein alleged were proximately caused
15 by their conduct.

16 5. Plaintiff is informed and believes, and thereon alleges, that at all times material herein
17 the Defendants, and each of them, were the agents, servants, or employees, or ostensible agents,
18 servants, and employees of each other Defendant, and as such, were acting within the course and
19 scope of said agency and employment or ostensible agency and employment, except on those
20 occasions when Defendants were acting as principals, in which case, said Defendants, and each of
21 them, were negligent in the selection, hiring, and use of the other Defendants.

22 6. At all times mentioned herein, each of the Defendants was the co-tortfeasor of each
23 of the other Defendants in doing the things hereinafter alleged.

24 7. Plaintiff is further informed and believes that at all times relevant hereto, Defendants,
25 and each of them, acted in concert and in furtherance of the interests of each other Defendant. The
26 conduct of each Defendant combined and cooperated with the conduct of each of the remaining
27 Defendants so as to cause the herein described incidents and the resulting injuries and damages to
28 Plaintiff.

1 **VENUE AND JURISDICTION**

2 8. At all relevant times hereto, the Defendants, and each of them, were residents of the
3 County of Los Angeles, State of California.

4 9. The wrongful conduct alleged against the Defendants, and each of them, occurred in
5 the County of Los Angeles, State of California. At all relevant times hereto, the conduct at issue was
6 part of a continuous and ongoing pattern of behavior.

7 10. This Court is the proper court because the wrongful acts that are the subject of this
8 action occurred here, at least one Defendant now resides in its jurisdictional area, and injury to
9 person or damage to personal property occurred in its jurisdictional area.

10 11. Plaintiff has complied with and/or exhausted any applicable claims statutes and/or
11 administrative and/or internal remedies and/or grievance procedures, and/or are excused from
12 complying therewith.

13 12. Plaintiffs has complied with the claim presentation requirement of California
14 Government Code § 945.4 and § 912.4. Plaintiff timely filed a government claim with the City of
15 Los Angeles and the LAPD on or about June 26, 2020. Plaintiff is informed and believes that the
16 City failed to act within the 45-day period under Govt. Code § 912.4 to grant or deny the claim, and
17 that such failure is deemed a rejection of the claim by operation of law.

18 **GENERAL ALLEGATIONS**

19 13. At all times relevant to this claim, Plaintiff Mario Fernandez was a sworn peace
20 officer for the Los Angeles Police Department, assigned to various units within the LAPD. Plaintiff
21 Fernandez held the rank of Police Officer III + I. Plaintiff Fernandez was qualified for the positions
22 he held by reason of his education, experience, and training. Plaintiff Fernandez was assigned to
23 LAPD's elite Metro Division in 2015, after applying for, and being selected to, the coveted position.

24 14. Plaintiff Fernandez is a 14-year veteran of the LAPD who has consistently earned
25 stellar performance evaluations and multiple commendations for his work. As set forth below,
26 although Plaintiff's diligent work and efforts was recognized by the Department for years, Plaintiff's
27 career was irreparably harmed when the Department began retaliating against him in January 2020
28 by removing his police powers and downgrading him.

1 15. Plaintiff Fernandez was assigned to LAPD's elite Metro Division C Platoon, a crime
2 suppression platoon. Plaintiff Fernandez was initially assigned primarily to South Bureau divisions,
3 but was rotated to different divisions. At all relevant times, Plaintiff Fernandez's Platoon was
4 working Van Nuys Division in Valley Bureau as part of a crime suppression detail.

5 16. In or around 2015, as part of a Metro expansion by then Chief Beck, Plaintiff as well
6 as other officers began to be pressured by the Department to increase the production of specific
7 crime statistics. Specifically, the Department and its various Command Staff members required
8 Plaintiff and other Metro officers to: (1) report higher numbers of contacts with gang members
9 which needed to be reflected by submitting field interview cards ("FI Cards"); (2) make higher
10 numbers of gun arrests and seizures; and (3) make higher numbers of arrests of gang members. The
11 clear message to Plaintiff from the Department and its various levels of Command Staff was that it
12 was all about producing more arrests involving "gangsters and guns." In fact, this was stated
13 repeatedly in roll calls, briefings, and otherwise on a continuous and on-going basis. It was all about
14 the guns, and as directed to Plaintiff and others similarly situated, it was all about their numbers of
15 arrests and FI Cards. Minimums had to be met.

16 17. At Metro, if an officer went more than a day or two without producing a gang or gun
17 arrest, Command Staff would make it clear that "production" needed to increase. "Production" was,
18 is, and always has been, LAPD Speak for more numbers on your Recap, which means more arrests
19 and FI Cards. In fact, certain officers were punished by being taken out of the field and given
20 administrative assignments if their gang/gun arrest numbers weren't high enough. This was part of
21 the methodology used to send and enforce the message: Do as we say regarding our demands of
22 arrests and FI Card numbers or you are done here. Additionally, it was understood as directed by
23 Metro Command and LAPD Command Staff that, in Metro, officers would be promoted if they
24 produced higher numbers of gang/gun arrests and higher numbers of FI Cards identifying people as
25 gang members. Again, it was all about the Recap which means it was all about actual numbers.

26 18. The requirement for specific types of arrests, and numbers and quantity related to
27 such arrests, violates the arrest quota in the state of California as set forth in the Vehicle Code, and
28 potentially violates other due process and constitutional requirements. Nonetheless, LAPD and

1 Metro Command deployed their demands.

2 19. In January 2020, Plaintiff, along with at least 4 other officers in Metro's C Platoon,
3 was served with a Notice of Intent to Downgrade (a demotion), had his gun and badge taken away,
4 and was ordered home. Plaintiff was given no reason for the downgrade or for being ordered home,
5 which is itself a violation of internal policy and procedures and a violation of Plaintiff's rights under
6 the Public Safety Officers Procedural Bill of Rights, Cal. Govt. Code § 3300, *et seq.*, ("POBRA")
7 and the state and federal constitutions with respect to due process. Plaintiff remains ordered home,
8 still with no alleged justification from the Department and still with the Notice of Downgrade
9 pending. The reason the Department did not follow-through with the downgrade? They realized
10 that they acted hastily and improperly, and for an improper purpose that is contrary to law, but did
11 not know what to do. Downgrade Notices are supposed to be served and carried out, with formal
12 response from the person to be downgraded, all within 30 days. Plaintiff is now 11 months into the
13 process.

14 20. The Department's downgrade and order home was retaliatory in violation of Labor
15 Code § 1102.5 as it was done for the purpose of sending a clear message to Plaintiff and others not
16 to speak-up or otherwise disclose the Department's above-described policy and practice of
17 pressuring/ordering/requiring Metro officers to increase their numbers of gang identifications,
18 arrests, and gun arrests. The Department believed that Plaintiff and/or fellow Metro officers either
19 had disclosed or may disclose information about the potentially illegal Metro policies, and the best
20 way to exert control over Plaintiff and fellow officers, and to squash any revelation of the
21 Department's potentially illegal policies, was to punish and downgrade Plaintiff, which would set an
22 example for all others to see. Additionally, the timing of this downgrade was proximate to an *LA*
23 *Times* article that had just run or was soon to run regarding the issues with Metro Crime Suppression
24 Platoons and the CalGangs database.

25 21. In fact, the Department's decision to retaliate against Plaintiff and the certain other
26 officers who were downgraded and ordered home was not randomly made. Plaintiff was specifically
27 chosen because the Department believed that would be the most effective way to send the message
28 to the entire Metro officer population to be quiet and not speak out regarding the potentially illegal

1 policies and practices of pressuring/ordering/requiring officers to increase the statistics of identified
2 gang members and gang and gun arrests.

3 22. The Department retaliated against Plaintiff and other Metro officers in this regard
4 because it was highly motivated to control the narrative. Shortly after Plaintiff was downgraded, it
5 was publicly revealed that one of the officers at Metro was being referred to the Department's Board
6 of Rights for termination and also for potential criminal prosecution for allegedly falsely portraying
7 people as gang members on FI Cards. Apparently, in 2019, a mother in Van Nuys complained to the
8 Department that her son had been misidentified in an FI Card as a gang member leading to an
9 internal investigation. After that story was set to come out in the *LA Times* (the LAPD was given a
10 heads-up), the last thing the Department wanted when it was going to be forced to respond to public
11 outrage over a kid being improperly included in CalGangs was the disclosure by Plaintiff or others
12 that Metro's command had actually pressured its officers to increase the numbers of gang
13 identifications, as well as arrests and gun seizures, which caused the set of facts that lead to the
14 mother's complaints about her son being wrongly identified as a gang member.

15 23. The retaliation against Plaintiff is known by all Defendants, throughout the chain of
16 Command, and the Department and has been carried out and/or ratified by Defendants, or
17 Defendants have otherwise failed to take steps to prevent or undo the retaliation, or both.
18 Defendants have created, ratified, condoned, and failed to remedy the retaliation. This is a
19 continuing and ongoing violation and therefore subject to the continuing violation doctrine.

20 24. Additionally, because the LAPD is a paramilitary organization, it is impossible to
21 now know all the members of the Department and Command Staff that had a hand in this claim, and
22 Plaintiff submits that discovery will reveal all involved, but that it likely includes members of the
23 LAPD from the rank of Sergeant and above, and involves multiple members of command staff
24 across many Bureaus, all the way up to the Chief of Police.

25 25. In fact, a controversial swelling of the ranks of Metro began in or around 2015 when
26 then Chief Beck swept-in to Metro several hundred officers that had not been properly trained
27 (through no fault of their own). The sole purpose of the sweep-in was to swell the number of the
28 general crime suppression platoons in Metro so that the numbers of arrests for guns and gangs, and

1 for identifying gang members in the form of FI Cards, could be significantly increased. Beck and
2 the LAPD and its command staff did this to look good for the public, and this, in part, lead to the
3 top-down pressure for arrests and FI cards which lead to Plaintiff's current situation. In fact, back in
4 2015, multiple Metro veterans went on local news with disguised voices and faces and explained
5 how the LAPD's actions to swell the ranks of Metro so quickly and without training risked the lives
6 of the officers already in Metro, the officers being swept-in, and the public. In fact, during an on-
7 camera interview with local news media about this situation, *i.e.*, the rapid sweep-in leading to
8 officer and public safety issues, then Chief Beck famously walked out of the interview and said with
9 cameras rolling that the reporter would never get another interview from him. Beyond that, the
10 LAPD and the City made calls to the reporter's news agency to tell such agency that their inquiry
11 was not well received and that their agency would not be welcome in the future if the story was
12 pursued.

13 26. Further, the sweep-in by Beck and the LAPD was so overly aggressive that the newly
14 minted Metro officers often did not have the requisite tac vests, weapons, and safety equipment
15 needed, which in itself violates multiple Cal OSHA standards. The new officers also did not have
16 the proper training on the weapons and gear they needed. All of this contributed, at least in part, to
17 the situation presented today: a mother complaining her son was wrongly included in the CalGang
18 system because the LAPD and its command staff pushed and pushed and pushed and pushed for
19 numbers, the LAPD being found out for such pushing, and then the Department circling its wagons
20 to keep Plaintiff and his fellow officers quiet.

21 27. The retaliation has caused damage to Plaintiff's professional reputation, his ability to
22 promote, and his ability to be selected for other units. It has cost Plaintiff a loss of pay and benefits.
23 The retaliation will cause Plaintiff to have to take a different career and retirement path, lost
24 overtime opportunities and pay, and will adversely affect his income, pension, and other benefits.
25 The retaliation has adversely affected Plaintiff's personal physical health and wellbeing, which may
26 include medical expenses that persist into the future. Plaintiff has also suffered general damages in
27 the form of anxiety, anguish, and mental suffering. The Defendants' wrongful conduct is continuing
28 and ongoing as of the present date, and Plaintiff's damages are continuing.

28. The conduct of Defendants, and each of them, was a violation of Plaintiff's rights under both state and federal law, including but not limited to the POBRA and California Labor Code § 1102.5. Therefore, Defendants, and each of them, are liable under Labor Code § 1102.5, and are liable for retaliation in violation of public policy as identified in *Tameny v. Atlantic Richfield Co.* (1980) 27 Cal.3d 167 and its progeny. The wrongful conduct of Defendants, and each of them, is continuing and ongoing as of the present date.

FIRST CAUSE OF ACTION

BY PLAINTIFF AGAINST ALL DEFENDANTS

VIOLATION OF CALIFORNIA LABOR CODE SECTION 1102.5

29. Plaintiff re-alleges and incorporates by reference each and every allegation contained in paragraphs 1-29 of this complaint as though fully set forth herein again.

30. At all times mentioned herein, California Labor Code section 1102.5 was in full force and effect and was binding on Defendants, and each of them. In particular, subdivision (b) of section 1102.5 provides that an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties. Subdivision (c) of section 1102.5 provides that an employer, or any person acting on behalf of the employer, shall not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.

31. As alleged above, Defendants retaliated against Plaintiff by subjecting him to adverse employment actions because Defendants believed that Plaintiff either disclosed or may disclose information to his employer (a law enforcement agency) or to the Department's Internal Affairs

1 (which has the authority to investigate illegal LAPD policies) the Department's above-described
2 policy and practice of pressuring Metro officers to increase the numbers of gang identifications,
3 arrests, and gun arrests. The Department believed that Plaintiff and/or fellow Metro officers either
4 had disclosed or may disclose information about the potentially illegal Metro policies, and the best
5 way to exert control over Plaintiff and his fellow officers and to squash any revelation of the
6 Department's potentially illegal policies was to punish and downgrade Plaintiff, which would set an
7 example for all others to see.

8 32. Plaintiff had reasonable cause to believe that the Department's policy and practice of
9 pressuring officers to increase the numbers of gang identifications on FI Cards, gang arrests, and
10 gun arrests was a violation of state and/or federal law and/or a violation of local, state or federal
11 rules or regulations. Further, Plaintiff refused to yield to the Department's pressure and engage in
12 illegal activity.

13 33. The Department's downgrade of Plaintiff and removal of his police powers was
14 retaliatory in violation of Labor Code § 1102.5 and was done to squash any revelation of the
15 Department's potentially illegal policies. The Department was highly motivated to control and
16 continue to control the narrative, especially in light of the revelation that FI Cards may have been
17 used by an officer in Metro to misidentify a youth in Van Nuys as a gang member.

18 34. Defendant's belief that Plaintiff disclosed or might disclose the existence of these
19 Department policies and/or Plaintiff's refusal to participate in the unlawful activity was a
20 contributing factor in the Department's decision to subject Plaintiffs to the adverse employment
21 action, including the removal of his police powers, downgrade, deselection, subjecting him to an
22 investigation, and other adverse acts.

23 35. Defendants, and each of them, allowed, permitted, condoned, ratified, and/or enabled
24 the retaliation and/or other wrongful conduct as described herein.

25 36. As a legal result of the above-described conduct of Defendants, and each of them,
26 Plaintiff has sustained and will continue to sustain general damages in the form of physical, mental,
27 and emotional injuries, pain, distress, suffering, indignity, damage to his good name, reputation,
28 standing in the community, and other non-economic damages.

37. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff was required to, and/or in the future may be required to, engage the services of health care providers, and incurred expenses for medicines, health care appliances, modalities, and/or other related expenses in a sum to be ascertained according to proof.

38. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has suffered a loss of pay and benefits. The retaliation will cause Plaintiff to have to take a different career and retirement path, lost overtime opportunities and pay, and will adversely affect his income, pension, and other benefits and other economic damages, in an amount to be ascertained according to proof. Plaintiff claims such amount as damages together with prejudgment interest pursuant to California Civil Code section 3287 and/or any other provision of law providing for prejudgment interest.

39. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff suffered incidental, consequential, and/or special damages, in an amount according to proof.

40. As a further legal result of the above-described conduct of Defendants, and each of them, Plaintiff has and will continue to incur attorneys' fees and costs in an amount according to proof.

PRA YER

WHEREFORE, Plaintiff seeks judgment against Defendants, and each of them, as follows:

1. Physical, mental, and emotional injuries, pain, distress, suffering, anguish, fright, nervousness, grief, anxiety, worry, shame, mortification, injured feelings, shock, humiliation and indignity, as well as other unpleasant physical, mental, and emotional reactions, damages to reputation, and other non-economic damages, in a sum to be ascertained according to proof;

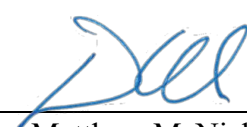
2. Health care, services, supplies, medicines, health care appliances, modalities, and other related expenses in a sum to be ascertained according to proof;

3. Loss of wages, income, earnings, earning capacity, support, domestic services, benefits, and other economic damages in a sum to be ascertained according to proof;

- 1 4. Other actual, consequential, and/or incidental damages in a sum to be ascertained
2 according to proof;
3 5. Attorney's fees and costs of suit pursuant to statute and case law;
4 6. Costs of suit herein incurred;
5 7. Pre-judgment interest; and
6 8. Such other and further relief as the Court may deem just and proper.
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8 Dated: November 23, 2020

McNICHOLAS & McNICHOLAS, LLP

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11 By: 
12 Matthew McNicholas
13 Douglas D. Winter
14 Attorneys for Plaintiff
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Dated: November 23, 2020

By: _____

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